

Amended

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
CHARGE AGAINST EMPLOYER

DO NOT WRITE IN THIS SPACE	
Case 03-CA-251403	Date Filed 1/15/20

INSTRUCTIONS:

File an original with NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring.

I. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT

a. Name of Employer Whole Foods Market Group, Inc.		b. Tel. No. (518) 621-5300
		c. Cell No.
		f. Fax No.
d. Address (Street, city, state, and ZIP code) 1425 Central Avenue Albany, NY 12205	e. Employer Representative Matthew Bishop, HR	g. e-mail matthew.bishop@wholefoods.com
		h. Number of workers employed 140
i. Type of Establishment (factory, store, wholesaler, etc.) Grocery Store	j. Identify principal product or service Groceries	

The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and (2) of the National Labor Relations Act, and these unfair labor practices are practices affecting commerce within the meaning of the Act, or these unfair labor practices affecting commerce within the meaning of the Act and the Portal Disorganization Act.

2. Basis of the Charge (Set forth a clear and concise statement of the facts constituting the alleged unfair labor practices)

On or about (b) (6), (b) (7)(C) 2019, the Employer denied its employee (b) (6), (b) (7)(C) a raise because of (b) (6), (b) (7)(C) protected concerted activity.

On or about (b) (6), (b) (7)(C) 2019, the Employer disciplined its employee (b) (6), (b) (7)(C) because of (b) (6), (b) (7)(C) protected concerted activity.

On or about (b) (6), (b) (7)(C) 2019, the Employer disciplined its employee (b) (6), (b) (7)(C) because of (b) (6), (b) (7)(C) protected concerted activity.

3. Full name of party filing charge (If labor organization, give full name, including local name and number)
(b) (6), (b) (7)(C) an individual

4a. Address (Street and number, city, state, and ZIP code) (b) (6), (b) (7)(C)	4b. Tel. No. (b) (6), (b) (7)(C)
	4c. Cell No.
	4d. Fax No.
	4e. e-mail (b) (6), (b) (7)(C)

5. Full name of national or international labor organization of which it is an affiliate or constituent unit (to be filled in when charge is filed by a labor organization)

6. DECLARATION

I declare that I have read the above charge and that the statements are true to my knowledge and belief.

(b) (6), (b) (7)(C)

(b) (6), (b) (7)(C) an individual

(Print type name and title or office, if any)

7a. Tel. No.
(b) (6), (b) (7)(C)

Office, if any, Cell No.

Fax No.

7c. e-mail
(b) (6), (b) (7)(C)

Address (b) (6), (b) (7)(C) Date 1/14/2020

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001) PRIVACY ACT STATEMENT

Submission of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing unfair labor practice and related proceedings or litigation. The source code for the information the fully set forth in the Federal Register, 71 Fed. Reg. 74042-43 (Dec. 13, 2006). The NLRB will further explain these rules upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information may cause the NLRB to decline to involve its processes.



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

REGION 03
130 S Elmwood Ave Ste 630
Buffalo, NY 14202-2465

Agency Website: www.nlrb.gov
Telephone: (716)551-4931
Fax: (716)551-4972

February 4, 2020

Jeremy M. Brown Esq., Member
Epstein Becker & Green P.C.
One Gateway Center, Suite 1300
Newark, NJ 07102-5321

Re: Whole Foods Market Group, Inc
Case 03-CA-251403

Dear Mr. Brown:

This is to advise you that I have approved the Charging Party's request to withdraw the allegation of the charge that the Employer violated Section 8(a)(1) of the Act by disciplining an employee on about (b) (6), (b) (7)(C) 2019. The remaining portions of the charge have not been withdrawn.

Very truly yours,

/s/Paul J. Murphy

PAUL J. MURPHY
Regional Director

cc: (b) (6), (b) (7)(C)

Matthew Bishop, HR
Whole Foods Market Group, Inc.
1425 Central Avenue
Albany, NY 12205



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February 25, 2020

(b) (6), (b) (7)(C)

Re: Whole Foods Market Group, Inc.
Case 03-CA-251403

Dear (b) (6), (b) (7)(C):

We have carefully investigated and considered your charge that Whole Foods Market Group, Inc. has violated the National Labor Relations Act.

Decision to Approve Settlement Agreement: In view of the terms the Charged Party has agreed to in the attached Settlement Agreement, I have determined that it would not effectuate the purposes of the National Labor Relations Act to issue complaint at this time. I am, therefore, approving the Settlement Agreement in this matter. In this regard, by letter issued on February 21, 2020, you were invited to join in the Settlement Agreement and advised that if you objected to the agreement you had until February 28, 2020 to submit your written objections to it. On February 24, 2020, you filed your objections to the Settlement Agreement. For the following reasons, I am overruling these objections and will approve the Settlement Agreement.

Your objections include an assertion that you were entitled to a 5% wage increase instead of the 2% increase included in the Settlement Agreement. Although you claimed that other employees received 5% wage increases, you did not identify these individuals or explain how their employment situations were similar to yours. Moreover, the Region's investigation demonstrated that at least one similarly situated¹ employee to yourself was issued a wage increase of 2%. As such, I am overruling your objection.

You also object to the terms of the Settlement Agreement requiring immediate posting of the Notice to Employees upon receipt by the Charged Party and instead request that the posting period be delayed until you return from workers' compensation. As you will also receive a mailed copy of the Notice to Employees and are entitled to a photocopy of the signed and dated Notice to Employees upon request, I am overruling this objection.

You also requested that you be given assurances against reprisal by the Charged Party for discussing the Settlement Agreement. Retaliation or reprisal against an individual for filing charges with the Board is a violation of Section 8(a)(4) of the Act. Moreover, such conduct, if proven, could constitute grounds for revoking the Settlement Agreement and result in the

¹ "[S]imilarly situated" in this case refers to your employment record with the prospective expungement of the (b) (6), (b) (7)(C) 2019 corrective action that is provided for in the Settlement Agreement.

issuance of a complaint in this matter. Given the existence of these safeguards, I decline your request to require such assurances within the Settlement Agreement.

Accordingly, in view of the terms the Charged Party has agreed to in the attached Settlement Agreement, I have determined that it would not effectuate the purposes of the Act to institute further proceedings at this time. I am, therefore, approving the Settlement Agreement and refusing to issue a complaint in this matter.

Your Right to Appeal: You may appeal my decision to the General Counsel of the National Labor Relations Board, through the Office of Appeals.

Means of Filing: An appeal may be filed electronically, by mail, by delivery service, or hand-delivered. To file electronically using the Agency's e-filing system, go to our website at www.nlr.gov and:

- 1) Click on E-File Documents;
- 2) Enter the NLRB Case Number; and,
- 3) Follow the detailed instructions.

Electronic filing is preferred, but you also may use the enclosed Appeal Form, which is also available at www.nlr.gov. You are encouraged to also submit a complete statement of the facts and reasons why you believe my decision was incorrect. To file an appeal by mail or delivery service, address the appeal to the **General Counsel at the National Labor Relations Board, Attn: Office of Appeals, 1015 Half Street SE, Washington, DC 20570-0001**. Unless filed electronically, a copy of the appeal should also be sent to me.

The appeal MAY NOT be filed by fax or email. The Office of Appeals will not process faxed or emailed appeals.

Appeal Due Date: The appeal is due on **March 10, 2020**. If the appeal is filed electronically, the transmission of the entire document through the Agency's website must be completed **no later than 11:59 p.m. Eastern Time** on the due date. If filing by mail or by delivery service an appeal will be found to be timely filed if it is postmarked or given to a delivery service no later than March 9, 2020. **If an appeal is postmarked or given to a delivery service on the due date, it will be rejected as untimely.** If hand delivered, an appeal must be received by the General Counsel in Washington D.C. by 5:00 p.m. Eastern Time on the appeal due date. If an appeal is not submitted in accordance with this paragraph, it will be rejected.

Extension of Time to File Appeal: The General Counsel may allow additional time to file the appeal if the Charging Party provides a good reason for doing so and the request for an extension of time is **received on or before March 10, 2020**. The request may be filed electronically through the **E-File Documents** link on our website www.nlr.gov, by fax to (202)273-4283, by mail, or by delivery service. The General Counsel will not consider any request for an extension of time to file an appeal received after March 10, 2020, **even if it is**

postmarked or given to the delivery service before the due date. Unless filed electronically, a copy of the extension of time should also be sent to me.

Confidentiality: We will not honor any claim of confidentiality or privilege or any limitations on our use of appeal statements or supporting evidence beyond those prescribed by the Federal Records Act and the Freedom of Information Act (FOIA). Thus, we may disclose an appeal statement to a party upon request during the processing of the appeal. If the appeal is successful, any statement or material submitted with the appeal may be introduced as evidence at a hearing before an administrative law judge. Because the Federal Records Act requires us to keep copies of case handling documents for some years after a case closes, we may be required by the FOIA to disclose those documents absent an applicable exemption such as those that protect confidential sources, commercial/financial information, or personal privacy interests.

Very truly yours,

/s/PAUL J. MURPHY

PAUL J. MURPHY
Regional Director

Enclosure

cc: Matthew Bishop, HR
Whole Foods Market Group, Inc.
1425 Central Avenue
Albany, NY 12205

Jeremy M. Brown, Esq.
Epstein Becker & Green P.C.
One Gateway Center, Suite 1300
Newark, NJ 07102-5321

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
SETTLEMENT AGREEMENT

IN THE MATTER OF

Whole Foods Market Group, Inc.

Case 03-CA-251403

Subject to the approval of the Regional Director for the National Labor Relations Board, the Charged Party and the Charging Party **HEREBY AGREE TO SETTLE THE ABOVE MATTER AS FOLLOWS:**

POSTING OF NOTICE — After the Regional Director has approved this Agreement, the Regional Office will send copies of the approved Notice to the Charged Party in English and in additional languages if the Regional Director decides that it is appropriate to do so. A responsible official of the Charged Party will then sign and date those Notices and immediately post them in conspicuous locations where notices to employees are customarily posted at the Charged Party's facility located at 1425 Central Ave., Albany, NY 12205. The Charged Party will keep all Notices posted for 60 consecutive days after the initial posting.

COMPLIANCE WITH NOTICE — The Charged Party will comply with all the terms and provisions of said Notice.

NON-ADMISSION CLAUSE — By entering into this Settlement Agreement, the Charged Party does not admit that it has violated the National Labor Relations Act.

BACKPAY — Within 14 days from approval of this agreement, the Charged Party will make whole (b) (6), (b) (7)(C) by payment to (b) (6), (b) (7)(C) of \$86 in backpay and \$1 in interest. The Charged Party will make appropriate withholdings. No withholdings should be made from the interest portion of the backpay. The Charged Party will also file a report with the Regional Director allocating the payment(s) to the appropriate calendar year.

SCOPE OF THE AGREEMENT — This Agreement settles only the allegations in the above-captioned case(s), including all allegations covered by the attached Notice to Employees made part of this agreement, and does not settle any other case(s) or matters. It does not prevent persons from filing charges, the General Counsel from prosecuting complaints, or the Board and the courts from finding violations with respect to matters that happened before this Agreement was approved regardless of whether General Counsel knew of those matters or could have easily found them out. The General Counsel reserves the right to use the evidence obtained in the investigation and prosecution of the above-captioned case(s) for any relevant purpose in the litigation of this or any other case(s), and a judge, the Board and the courts may make findings of fact and/or conclusions of law with respect to said evidence.

PARTIES TO THE AGREEMENT — If the Charging Party fails or refuses to become a party to this Agreement and the Regional Director determines that it will promote the policies of the National Labor Relations Act, the Regional Director may approve the settlement agreement and decline to issue or reissue a Complaint in this matter. If that occurs, this Agreement shall be between the Charged Party and the undersigned Regional Director. In that case, a Charging Party may request review of the decision to approve the Agreement. If the General Counsel does not sustain the Regional Director's approval, this Agreement shall be null and void.

AUTHORIZATION TO PROVIDE COMPLIANCE INFORMATION AND NOTICES DIRECTLY TO CHARGED PARTY — Counsel for the Charged Party authorizes the Regional Office to forward the cover letter describing the general expectations and instructions to achieve compliance, a conformed settlement, original notices and a certification of posting directly to the Charged Party. If such authorization is granted, Counsel will be simultaneously served with a courtesy copy of these documents.

Yes

(b) (6), (b) (7)(C)

No

Initials

PERFORMANCE — Performance by the Charged Party with the terms and provisions of this Agreement shall commence immediately after the Agreement is approved by the Regional Director, or if the Charging Party does

not enter into this Agreement, performance shall commence immediately upon receipt by the Charged Party of notice that no review has been requested or that the General Counsel has sustained the Regional Director.

The Charged Party agrees that in case of non-compliance with any of the terms of this Settlement Agreement by the Charged Party, and after 14 days' notice from the Regional Director of the National Labor Relations Board of such non-compliance without remedy by the Charged Party, the Regional Director will issue a Complaint that includes the allegations covered by the Notice to Employees, as identified above in the Scope of Agreement section, as well as filing and service of the charge(s), commerce facts necessary to establish Board jurisdiction, labor organization status, appropriate bargaining unit (if applicable), and any other allegations the General Counsel would ordinarily plead to establish the unfair labor practices.

NOTIFICATION OF COMPLIANCE — Each party to this Agreement will notify the Regional Director in writing what steps the Charged Party has taken to comply with the Agreement. This notification shall be given within 5 days, and again after 60 days, from the date of the approval of this Agreement. If the Charging Party does not enter into this Agreement, initial notice shall be given within 5 days after notification from the Regional Director that the Charging Party did not request review or that the General Counsel sustained the Regional Director's approval of this agreement. No further action shall be taken in the above captioned case(s) provided that the Charged Party complies with the terms and conditions of this Settlement Agreement and Notice.

Charged Party Whole Foods Market Group, Inc.	Charging Party (b) (6), (b) (7)(C)
By: Name and Title Date (b) (6), (b) (7)(C) 2/21/20	By: Name and Title Date
Print Name and Title below (b) (6), (b) (7)(C)	Print Name and Title below
Recommended By: Date THOMAS MILLER Digitally signed by THOMAS MILLER Date: 2020.02.24 14:12:54 -05'00' THOMAS A. MILLER Field Examiner	Approved By: Date /s/PAUL J. MURPHY 2/25/2020 PAUL J. MURPHY Regional Director, Region 3

(To be printed and posted on official Board notice form)

THE NATIONAL LABOR RELATIONS ACT GIVES YOU THE RIGHT TO:

- Form, join, or assist a union;
- Choose a representative to bargain with us on your behalf;
- Act together with other employees for your benefit and protection;
- Choose not to engage in any of these protected activities.

WE WILL NOT do anything to prevent you from exercising the above rights.

YOU HAVE THE RIGHT to discuss issues and complaints regarding your workplace conditions, including retirement benefits, with other employees and **WE WILL NOT** do anything to interfere with your exercise of that right.

WE WILL NOT discipline you because you exercise your right to discuss issues and complaints regarding your working conditions, including retirement benefits, with other employees.

WE WILL NOT withhold a wage increase from you because you exercise your right to discuss issues and complaints regarding your working conditions, including retirement benefits, with other employees.

WE WILL NOT in any like or related manner interfere with your rights under Section 7 of the Act.

WE WILL pay (b) (6), (b) (7)(C) for the wages not paid to (b) (6), (b) (7)(C) because of a (b) (6), (b) (7)(C) 2019 corrective action that has now been rescinded.

WE WILL rescind the (b) (6), (b) (7)(C) 2019 corrective action issued to (b) (6), (b) (7)(C) and **WE WILL** notify (b) (6), (b) (7)(C) in writing that this has been done and that it will not be used against (b) (6), (b) (7)(C) in any way.

Whole Foods Market Group, Inc.

(Employer)

Dated: 2/21/20 By

(b) (6), (b) (7)(C)

(Representative)

(Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. We conduct secret-ballot elections to determine whether employees want union representation and we investigate and remedy unfair labor

practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below or you may call the Board's toll-free number 1-844-762-NLRB (1-844-762-6572). Hearing impaired callers who wish to speak to an Agency representative should contact the Federal Relay Service (link is external) by visiting its website at <https://www.federalrelay.us/tty> (link is external), calling one of its toll free numbers and asking its Communications Assistant to call our toll free number at 1-844-762-NLRB.

130 S Elmwood Ave Ste 630
Buffalo, NY 14202-2465

Telephone: (716)551-4931
Hours of Operation: 8:30 a.m. to 5 p.m.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the above Regional Office's Compliance Officer.
